IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 1163 of 2002
in
SPECIAL CIVIL APPLICATION NO 7300 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAMNIKLAL POPATBHAI LADANI C/O BABULAL M MAVANI ADVOCATE

Appearance:
1. LETTERS PATENT APPEAL No. 1163 of 2002
MR HS MUNSHAW for Appellant No.
MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

Date of decision: 09/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Admit.
Shri Paul, learned Counsel for the respondent workman waives service of Notice. At the joint request of the learned Counsel for the parties the matter is heard and finally disposed of today by this order.

2. For remaining absent from duty the respondent workman was dismissed from service. He was working as driver. The Labour Court found his termination illegal, therefore, by its Award dated 10.1.2001 allowed Reference (LCJ) No.104 of 1996 and declared the termination order dated 15.3.1996 of the respondent workman as illegal and accordingly the same was quashed and set aside. He was ordered to be taken back in service with all other consequential benefit and backwages, including the continuity in service and also cost of Rs.1000/- was awarded. This Award passed by the Labour Court was challenged by the appellant - Corporation before this Court by way of Special Civil Application No.7300 of 2001 which was dismissed by the learned Single Judge of this Court on 26.3.2002. Hence, this Appeal.

3. When this Appeal was initially placed before the Division Bench, consisting of J.N.Bhatt & K.A.Puj, JJ. on 10.2.2002, Notice was made returnable on 11.3.2003 and on Civil Application for interim relief also notice was ordered to be issued and by way of interim relief the impugned order of the Labour Court, confirmed by the learned Single Judge in a writ petition, was stayed subject to the provisions of Section 17(B) of the I.D.Act.

4. Thereafter, on Civil Application statement was made at the Bar by the learned Counsel Shri Munshaw before us on the last occasion that they have complied with the provisions of Section 17(B) of the I.D.Act. Therefore, ad.interim relief granted earlier by the previous Bench was confirmed and main L.P.A. was ordered to be placed for orders on today i.e. 9.5.2003.

5. At the outset it may be stated that the learned Counsel Shri Munshaw, appearing for the appellant Corporation, stated that initially another Division Bench of this Court had issued the Notice mainly on the point of backwages as 100% backwages was awarded. Therefore, the Award passed by the Labour Court regarding reinstatement was not stayed, but regarding backwages the order was passed u/s17(B) of the Act.

6. From the above, it appears that the Corporation

seems to have not been much worried about the order of reinstatement with continuity in service and other benefit of service awarded to the respondent - workman except full backwages awarded to the workman. According to Shri Munsha, the Labour Court, while setting aside the Award should have imposed some penalty on the respondent - workman for remaining absent from duty and it ought not to have awarded the full backwages and it could have awarded at the most 40 % backwages. However, he left the said issue to the discretion of the Court by passing appropriate order regarding backwages.

7. Learned Counsel Shri Paul, at the first instance, stated that no penalty can be imposed against the workman and instead of 100 % backwages the workman be paid 80 % backwages. However, he had also later on left the said issue at the discretion of the Court by passing appropriate order regarding backwages on condition that the Corporation may comply with the order of reinstatement with continuity in service and other benefits in service as early as possible and not later than 2 months from today.

8. In view of the above, we are of the considered opinion that interest of justice would be served by modifying the Award passed by the Labour Court awarding full backwages to the respondent workman and the respondent - workman be awarded 50 % backwages, instead of 100 % backwages, awarded by the Labour Court and confirmed by the learned Single Judge in Special Civil Application, without passing any order regarding penalty as, in our considered opinion, denying 50 % backwages would be sufficient penalty to the respondent - workman.

9. Accordingly, this Letters Patent Appeal is partly allowed and in turn main writ petition of the Appellant Corporation is allowed. The impugned Judgment and Award dated 10.1.2001 passed by the Labour Court, Junagadh, in Ref. No.104 of 1996, regarding reinstatement with all other consequential benefit of service, including continuity in service, is confirmed. However, part of the Award passed by the Labour Court by which full backwages awarded to the respondent workman is modified and it is ordered that the Appellant - Corporation shall pay 50 % backwages to the respondent workman provided the respondent - workman is reinstated in service latest by 1.7.2003 with all other benefit of service, including continuity of service, be given to him by that time. Regarding 50 % backwages the appellant Corporation shall work it out and pay the same to the appellant workman within 3 months from the date of receipt of the copy of

this order. However, the amount paid by the Corporation to the respondent workman u/s.17(B) of the Act be adjusted towards salary of the respondent - workman.

Appeal is partly allowed to the aforesaid extent with no order as to costs.

(B.J.Shethna, J.)

Date : May 09, 2003

(A. L. Dave, J.)

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